

In The United States District Court
For The Western District of Massachusetts

Julio Toledo Jr., et. al

PLAINTIFFS

v.

IBPO, Local 364,

DEFENDANT

v.

**Springfield Police Department,
DEFENDANT**

CIVIL ACTION NO.: 04-CV-30163-MAP

FILED
CLERK'S OFFICE
OCT 22 PM 2:50
U.S. DISTRICT COURT
WESTERN DISTRICT OF MASS.

PLAINTIFFS' MOTION TO AMEND COMPLAINT

NOW COMES Plaintiffs, union members, in the above-captioned matter and respectfully moves this Honorable Court that they be allowed to amend their Complaint that alleges that Defendant International Brotherhood of International Police Officers, Local 364 breached its statutory duty of fair representation.

The motion also seeks leave to amend the complaint to add a necessary and indispensable party Defendant City of Springfield Police Department for the sole purpose of enjoining the City of Springfield, their agents, servants and employees and those acting in active concert and with actual notice thereof from enforcing an arbitration award granted on June 25, 2004, which, is in direct conflict with the Consent Decree enumerated in *Castro v. Beecher*, 334 F. Supp. 930 (D. Mass. 1971), *aff'd*, 459 F.2d 725 (1st Cir. 1972); *Boston Chapter NAACP v. Beecher*, 371 F. Supp. 507 (D. Mass. 1974), *aff'd*, 504 F.2d 1017 (1st Cir. 1974).

The Plaintiffs named the City of Springfield Police Department as a defendant in this action for the sole purpose to enjoin it from enforcing an arbitration agreement resulting from a collective bargaining dispute with Defendant IBPO, Local 364.

Plaintiffs requests to add following parties who are minority police officers for the City of Springfield as Plaintiffs in this action: Carlos Ramirez, Rudolfo Espinosa, Raul Gonzalez, Mike Rivera, and Aristides Casillas. The addition of these individuals as named plaintiffs will not cause any new claims or separate factual issues to be raised, will not pose any prejudice to defendant, and is in the interests of justice.

Rule 15 of the Federal Rules of Civil Procedure governs the amendment of pleadings, and leave of court to amend "shall be freely given when justice so requires." An amendment will be allowed so long as the party that seeks to amend has not unduly delayed, is not acting in bad faith or with an intent to delay, when the defendant will not be unduly prejudiced, and when the amendment is not futile, see *Bey v. City of New York*, 2002 U.S. Dist. LEXIS 4626 (S.D.N.Y. 2002); *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L.Ed.2d 222 (1962); *Richardson Greenshields Sec., Inc. v. Lau*, 825 F.2d 647, 653 n.6 (2d Cir. 1987). A key inquiry as to whether undue prejudice will result is "the degree to which it would delay the final disposition of the action," *SEB S.A. v. Montgomery Ward & Co., Inc.*, 2002 U.S. Dist. LEXIS 18440 (S.D.N.Y. 2002)(quoting *H.L. Hayden Co. v. Siemens Medical Systems*, 112 F.R.D. 417, 419 (S.D.N.Y. 1986).

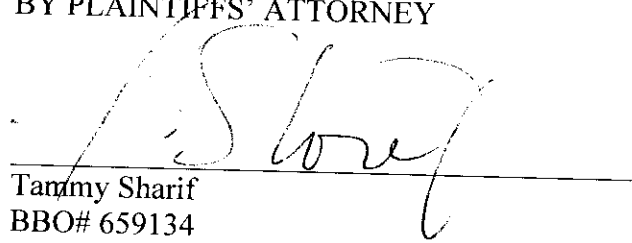
For the reasons stated herein, it is respectfully requested that the Court permit Plaintiffs' Motion to Amend their Complaint, and that the Court order that the complaint be amended such

that the First Amended Complaint be deemed filed, and that the Court grant such other and further relief as the Court may deem proper

Dated: October 22, 2004

Respectfully submitted.

BY PLAINTIFFS' ATTORNEY



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CERTIFICATE OF SERVICE

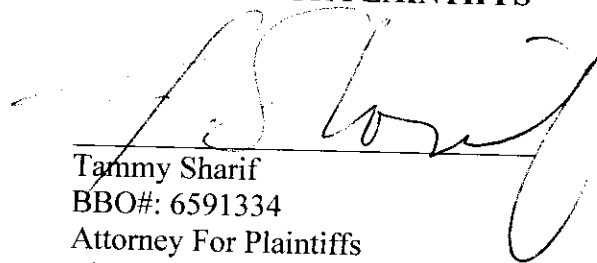
The undersigned hereby certifies that a true copy of the within Motion to Amend Complaint was this day served upon all parties to this action by mailing same, first class postage prepaid to all Attorneys of record.

SIGNED under the pains and penalties of perjury.

DATE: OCTOBER 22, 2004

Respectfully submitted,

ATTORNEY FOR PLAINTIFFS



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